UNITED STATES BANKRUPTCY COURT DISTRICT OF NORTH DAKOTA

In re:

VANITY SHOP OF GRAND FORKS, INC.,

Chapter 11

Case No. 17-30112

Debtor.

NOTICE OF B.E. CAPITAL'S APPLICATION TO ALLOW CLAIM NO. 292 AS ADMINISTRATIVE EXPENSE

NOTICE IS HEREBY GIVEN that B.E. Capital Management Fund LP has filed an application to allow Proof of Claim No. 292 as an administrative expense, a copy of which is attached and is served upon you.

NOTICE IS FURTHER GIVEN that written objections to said motion, if any, shall be filed with the Clerk of the United States Bankruptcy Court, Quentin N. Burdick Courthouse, 655 1st Avenue North, Suite 201, Fargo, North Dakota 58102, within TWENTY-ONE (21) days from the date of service hereof. Any objections not filed and served may be deemed waived.

Dated: August 25, 2017 STORCH AMINI PC

/s/ Jeffrey Chubak

Jeffrey Chubak (admitted pro hac vice) 140 East 45th Street, 25th Floor New York, New York 10017

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Attorneys for Creditor B.E. Capital Management Fund LP

UNITED STATES BANKRUPTCY COURT DISTRICT OF NORTH DAKOTA

In re:

VANITY SHOP OF GRAND FORKS, INC.,

Chapter 11

Case No. 17-30112

Debtor.

B.E. CAPITAL'S APPLICATION TO ALLOW CLAIM NO. 292 AS ADMINISTRATIVE EXPENSE

B.E. Capital Management Fund LP ("B.E. Capital") moves for an order, substantially in the form attached hereto as Exhibit 1, allowing Proof of Claim No. 292 (the "Claim"), filed by trade creditor Anfield Apparel Group, Inc. ("Anfield Apparel") in the amount of \$249,841.09 and subsequently transferred to B.E. Capital, a copy of which is attached hereto as Exhibit 2, as an administrative expense, and respectfully states:

INTRODUCTION

1. At the hearing held March 23, 2017, this Court invited Anfield Apparel to file an application for allowance of its unsecured claim an administrative expense, as a remedy for the Debtor's acknowledged failure to segregate and return goods subject to Anfield Apparel's timely reclamation demand. By this motion, B.E. Capital, as transferee of Anfield Apparel's claim and associated reclamation rights, moves for an order granting said relief.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. § 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2)(B). Venue is proper pursuant to 28 U.S.C. § 1408.

BACKGROUND

- 3. The Debtor commenced this case on March 1, 2017.
- 4. The Debtor stated in its First Day Declaration [ECF No. 26] that it had \$4.3 million in first lien debt owed to Wells Fargo, and approximately \$5 million in second lien debt owed

to TGC, L.P. ("<u>TGC</u>"), a partnership owned-and-controlled by the Bottrell family (insiders) (*id.* ¶27) that filed its financing statement on February 1, 2017, a mere month before the petition date (*id.* ¶29).

- 5. The Wells Fargo loan was paid shortly following the petition date [ECF No. 278 ¶8].
- 6. Serious questions exist as to whether the TGC claim, filed in the amount of \$5.25 million (*see* Proof of Claim No. 281, a copy of which is attached as Exhibit 3), is entitled to treatment as a secured claim. The First Day Declaration references a Subordinated Credit and Intercreditor Agreement, dated as of August 27, 2013 (*id.* ¶28), but does not state that a security interest was granted by that instrument (or any other instrument). Moreover, TGC's claim states it relates to various transfers made beginning July 2013, but the Debtor stated TGC's alleged security interest was perfected on February 1, 2017, making 11 U.S.C. § 547(e)(2) likely inapplicable. See also ECF No. 278 ¶9 (representation by Official Committee of Unsecured Creditors ("Committee") that it intends to seek to avoid perfection of TGC's security interest as a preference). The Committee also stated it is exploring whether the TGC claim should be recharacterization as equity. *Id.* ¶10; *see also* ECF No. 355 pp.1-2 (describing this case as "a controlled liquidation which includes the release of millions of dollars of potential insider liability," suggesting it is highly unlikely the TGC claim would be allowed in full as a secured claim).

Section 547(e)(2) provides that if a security interest is perfected within 30 days of the grant of the security interest, the transfer for section 547 purposes takes place at the time the security interest is granted, but if perfection occurs after the 30-day period the transfer takes place when the security interest is perfected.

- 7. On March 15, 2017, Anfield Apparel served a reclamation demand on the Debtor, a copy of which is attached to the Claim as Exhibit A. Five days later Anfield Apparel filed a notice with this Court that it timely served such a demand [ECF No. 142].
- 8. At the March 23, 2017 hearing on the Debtor's motion for authorization to pay prepetition taxes and related relief, the Debtor admitted that it did not keep records sufficient to identify which goods were subject to reclamation at the time a reclamation demand was served:

Mr. Brakke: To the extent the goods are, so to speak, in the warehouse, Your Honor, and essentially are still in the original shipping cartons, it is possible to identify goods subject to a reclamation claim.

We believe, Your Honor, that with one exception, which is a shipment of sunglasses with a value of approximately \$3,000, all of the other goods on which we've received reclamation claims have been shipped out of the warehouse long before the case was started ... It is simply impossible to trace ...

The Court: So actually returning merchandise, once it's been shipped from the crates at the original point of reception of the goods that were received, once it was shipped out to various stores, there's virtually no way to return the goods to the suppliers that provided them?

Mr. Brakke: There's no way to return them and there's also really no way to trace them to a particular shipment that might be the subject of a reclamation claim.

Mar. 23, 2017 Hr'g Tr. [ECF No. 250] ("<u>Tr.</u>") 34:17-35:5, 37:24-38:9.

9. At the hearing, the Debtor suggested creditors deprived of their reclamation rights by the Debtor's inability to trace goods subject to reclamation seek allowance of their claims as an administrative expense:

The Court: Okay. So the remedy would be --

Mr. Brakke: An administrative expense claim, which I would think would have far more value than inventory with Vanity labels that the manufacturers really can't make any use of if they recover it ...

Tr. 38:10-16.

10. And this Court agreed that an administrative expense was the appropriate remedy:

The Court: [I]f representations are correct and the goods cannot be traced and so you aren't going to have a genuine opportunity to retrieve inventory that your clients may have sent, then what you have is a claim for compensation. [I]f Mr. Brakke is correct, you may seek an administrative claim and receive that type of priority in the event you can achieve all of the necessary elements.

Tr. 64:24-65:13.

- 11. On April 18, 2017, Anfield Apparel commenced an adversary proceeding against the Debtor asserting claims for reclamation and imposition of a constructive trust (No. 17-30112).
- 12. Count 1 of the adversary complaint (cause of action for reclamation) sought a judgment directing the Debtor "to account for and return all of Plaintiff's goods supplied in the three prepetition shipments to Plaintiff," notwithstanding the Debtor's prior admission that returning such goods was no longer possible (Adv. Compl. ¶44; *see also* Prayer for Relief ¶1 (same)).
- 13. Count 2 of the complaint (cause of action for imposition of a constructive trust) sought a judgment "impress[ing] a constructive trust on Defendant's monies," or an "alternative equitable remedy using the Court's powers under title 11 § 105." (Adv. Compl. ¶52-53; see also Prayer for Relief ¶2 (same)).
- 14. On June 28, 2017, Anfield Apparel filed the Claim in the amount of \$249,841.09, representing the total amount of invoices attached to its reclamation demand. (A duplicate claim (Proof of Claim No. 282) was filed two days prior, which B.E. Capital has since withdrawn.)
- 15. B.E. Capital subsequently acquired the Claim and associated reclamation rights and filed a notice of transfer [ECF No. 385].

- 16. B.E. Capital agrees with the Debtor that if the goods subject to a reclamation demand cannot be traced, let alone returned, the remedy (but not the claim) of reclamation is unavailable. *See*, *e.g.*, *In re Griffin Retreading Co.*, 795 F.2d 676, 679 (8th Cir. 1986) ("In this case the right to reclaim was meaningless since [the debtor] sold the goods thus removing them from the corpus of the bankrupt's assets).
- 17. Because B.E. Capital does not wish to pursue the constructive trust claim asserted in the adversary complaint (a remedy disfavored in bankruptcy), and the cause of action for reclamation asserted in the adversary complaint only sought the return of goods, and did not seek the alternative relief sought herein, B.E. Capital withdrew the adversary proceeding after substituting in for Anfield Apparel as plaintiff, without prejudice, preserving its right to seek allowance of the Claim as an administrative expense.

RELIEF REQUESTED AND BASIS THEREFOR

18. By this motion, B.E. Capital requests entry of an order allowing the Claim as an administrative expense.

I. ALL ELEMENTS OF A RECLAMATION CLAIM HAVE BEEN SATISFIED

- A. All Statutory Elements of Section 546(c) are Satisfied
- 19. Section 546(c)(1) grants:
 - a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, [the right] to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—
 - (A) Not later than 45 days after the date of receipt of such goods by the debtor; or
 - (B) Not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

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- 20. The plain language of the statute makes reclamation an easy claim for a trade creditor to invoke. All it needs to do is show: (a) the goods subject to reclamation were sold in the ordinary course of business, (b) the debtor received the goods within 45 days prior to the petition date, (c) the debtor was insolvent when the goods were received, and (d) a timely written demand was made.
- 21. Each of the foregoing elements has been satisfied. It is undisputed the subject goods were sold in the ordinary course of Anfield Apparel's business, and that the goods were received by the Debtor during the 45-day window. Moreover, the Debtor admitted that it was balance sheet insolvent during this period. Specifically, the Debtor stated in its Schedules of Assets and Liabilities that as of the petition date, it owned assets worth \$12 million, but had \$9.6 million in secured debt (the Wells Fargo loan and TGC claim) and \$7.9 million in unsecured debt [ECF No. 188]; *see also* First Day Decl. ¶31 (acknowledging unsecured trade debt of \$5.7 million, in addition to secured debt outstanding as of the petition date).

B. Any Implicit Requirement that the Subject Goods be Identifiable in the Debtor's Possession is Also Satisfied

- 22. The Debtor has stated Anfield Apparel is ineligible for a reclamation claim because it cannot satisfy a non-statutory requirement that the goods sold be identifiable in the Debtor's possession at the time that the reclamation demand was received (Adv. Pro. No. 17-7011, ECF No. 7 pp.2-3).
- 23. That argument fails. At the outset, the (implicit) identification requirement does not mean what the Debtor says it means. The Debtor states it means a seller must establish that a debtor is capable of tracing goods subject to reclamation to a specific store location at the time a reclamation demand is received, so that the goods can be segregated and returned. However, the case law is clear the identification requirement means a seller need only demonstrate the debtor

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possessed goods subject to reclamation when the demand was received. *In re Morken*, 182 B.R. 1007, 1016-17 (Bankr. D. Minn. 1995) (citing *In re Rawson Food Serv., Inc.*, 846 F.2d 1343, 1344, 1347 (11th Cir. 1988) (identifiable and in the debtor's possession requirement means "the debtor must possess the goods when the reclamation demand is made and therefore that the seller must prove possession as part of its prima facie case"), *In re Landy Beef Co.*, 30 B.R. 19, 20-21 (Bankr. D. Mass. 1983) (requirement means the goods must be in the debtor's possession and identifiable as those of the seller on the date of the demand), and *Oliver Rubber Co. v. Griffin Retreading Co.* (*In re Griffin Retreading Co.*), 56 B.R. 239, 241 (D. Minn. 1985), *aff'd sub nom.*, 795 F.2d at 676 (8th Cir. 1986) (same)).

- 24. The Debtor does not dispute it possessed goods subject to reclamation when Anfield Apparel's reclamation demand was received, but rather states it had no obligation investigate the matter because the determination of which goods it possessed could not be made without great difficulty due to the Debtor's inability to trace the subject goods.
- 25. That excuse is unacceptable. The Eighth Circuit made clear in *Griffin* the Debtor was required to seek prior court authorization before selling the Anfield Apparel goods once a reclamation demand was made. 795 F.2d at 679 ("If Griffin desired to utilize the goods for the purpose of effecting a reorganization then it had the burden of requesting such use from the court"). No exception was carved out by the Eighth Circuit where the goods were traceable only with great difficulty, or were not traceable, which makes sense given that possession, not traceability, is the sole implied element of a reclamation claim. *See also In re Hartz Foods, Inc.*, 264 B.R. 33, 36 (Bankr. D. Minn. 2001) (quoting *Griffin*, 795 F.2d at 679) (it is the "debtor-buyer's 'obligation,' once it had received notice of the seller's intent to reclaim, 'to hold the goods for re-delivery to the seller' or seek court approval to use the goods otherwise").

26. It is undisputed the Debtor did not seek Court authorization to sell Anfield Apparel goods after receipt of its reclamation demand. It would make no sense to permit the Debtor to defeat a reclamation claim by ignoring its obligation to do so, as it would in effect reward the Debtor for ignoring its obligations as debtor in possession. As noted in *In re McLouth Steel Prods*. *Corp.*, 213 B.R. 978, 986 (E.D. Mich. 1997):

Appellant should not be allowed to both have its proverbial cake and eat it, too, by claiming on the one hand that Appellees made improper claims because they did not establish that the goods were on hand [i.e., identifiable in the debtor's possession], and, on the other, by claiming that Appellees' claims were extinguished because the goods, which were on hand, after all, were sold to a third-party ... Appellant's arguments are particularly unpersuasive where it has been conceded by all of the parties to this appeal, that none of them are now in a position to make such a determination without incurring great expense. It is Appellant's conduct which prevented timely discovery of the facts which it now claims are crucial, and which are now likely beyond ascertaining.

(Emphasis added.) *See also In re Georgetown Steel Co.*, 318 B.R. 340, 348 (Bankr. D. S.C. 2004) ("Reclamation Creditors should not be prejudiced by any argument that their rights are somehow diminished because they cooperated with a sale of Debtor's assets which included their goods").

II. B.E. CAPITAL IS ENTITLED TO AN ADMINISTRATIVE EXPENSE

A. The Reclamation Right Extends to Proceeds of Subject Goods

27. It is well established the right of reclamation extends to proceeds of goods. *Pester Refining Co. v. Ethyl Corp. (In re Pester Refining Co.)*, 964 F.2d 842, 846 (8th Cir. 1992) ("after the secured creditors' superior interests have been satisfied or released, the reclaiming seller retains a priority interest in any remaining goods and in any surplus proceeds from the secured creditors' foreclosure sale"); *U.S. v. Westside Bank*, 732 F.2d 1258, 1263 (5th Cir. 1984) (reclamation right "extends to traceable proceeds from the sale of goods where all prior interests in those goods have been satisfied. To hold otherwise would in many instances render the statutory

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remedy a nullity"); *In re Victory Mkts.*, 212 B.R. 738, 743 (Bankr. N.D.N.Y. 1997) ("The reclaiming seller retains a priority interests in any goods remaining and in any surplus proceeds remaining after the superior secured creditor's interests have been satisfied or released"); *In re Child World*, 145 B.R. 5, 8 (Bankr. S.D.N.Y. 1992) (same); 4 White & Summers, Uniform Commercial Code § 32-11 (6th ed. 2005) ("a seller of goods in compliance with statutory requirements for reclamation of goods retains priority status to the traceable proceeds from the sale of goods seller seeks to reclaim, but takes subject to the rights of prior perfect secured lenders").

- 28. As noted above, the Debtor admitted it did not keep records sufficient to trace Anfield Apparel goods upon receipt of its reclamation demand. Therefore, B.E. Capital, as transferee of the Claim, is entitled to a remedy.
- 29. The Debtor's disregard for the reclamation demand and continued sale of goods subject to reclamation should not be allowed to defeat the reclamation right. As reclamation is intended to protect the vendor from the insolvent buyer's deemed fraud (as described below), the right should not disappear as a result of the buyer's continued bad behavior; otherwise debtors would be incentivized to ignore reclamation demands and continue to sell goods subject to those demands even where no prior lien exists or where such lien is satisfied. *See McLouth* Steel, 213 B.R. at 986 (quoted *supra*). This interpretation is not consistent with historical practice and is clearly not the purpose of section 546(c).

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- B. BAPCPA Did Not Eliminate this Court's Ability to Award an Administrative Expense as a Remedy for a Debtor's Failure to Segregate and Return Goods Subject to Reclamation
- 30. The 2005 amendments to the Bankruptcy Code, and to section 546(c) in particular, did not deprive this Court of authority to grant a reclaiming vendor a remedy other than retaking possession of its goods, including the ability to grant an administrative claim.²
- 31. B.E. Capital readily acknowledges section 546(c) no longer provides a court <u>must</u> grant a reclaiming vendor an administrative claim or junior lien if it prevents the creditor from reclaiming goods. However, the fact that Congress granted vendors a remedy in section 503(b)(9) in no way implies that it curtailed vendors' rights to reclaim under an entirely separate section. The two sections (546(c) and 503(b)(9)) create separate remedies such that there are two separate rights. Although a vendor assuredly cannot be paid under section 503(b)(9) for goods reclaimed under section 546(c), there is no basis for curtailing a broad remedy (546(c)) because a vendor also has a narrow one (503(b)(9)).
- 32. Such an interpretation would also be inconsistent with the principle that "[w]hen Congress amends the bankruptcy laws, it does not write 'on a clean slate." *Dewsnup v. Timm*, 502 U.S. 410, 419 (1993). Changes in prior practice are not presumed based on vague language absent "at least some discussion in the legislative history." *Id. See also Keene Corp. v. U.S.*, 508 U.S. 200, 209 (1993) ("We do not presume that a revision worked a change in the underlying substantive law 'unless an intent to make such [a] change is clearly expressed"); *Hamilton v.*

Prior to BAPCPA, section 546(c)(2) provided "the court may deny reclamation to a seller with such a right of reclamation that has made such a demand only if the court—(A) grants the claim of such a seller priority as a claim of a kind specified in section 503(b) of this title; or (B) secures such claim by a lien." That subsection was replaced with current section 546(c)(2), which provides "If a seller of goods fails to provide notice in the manner described in paragraph (1), the sellers still may assert the rights contained in section 503(b)(9)."

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Lanning, 560 U.S. 505, 515 (2010) ("Pre-BAPCPA bankruptcy practice is telling because we will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure"). Abolition of the right to a remedy for reclamation other than the retaking of goods is inconsistent with longstanding precedent and an unreasonable reading of the statute.

- 33. Such an interpretation would also be unreasonable because BAPCPA was designed to enhance trade creditor remedies under the Bankruptcy Code. The changes to section 546(c) expanded the look-back period before bankruptcy during which goods may be subject to reclamation from 10 to 45 days and enlarged the postpetition grace period for making a reclamation demand from 10 to 20 days. Those changes reflect a clear congressional intent to improve reclaiming vendors' rights, and it would be wholly inconsistent with those changes to limit courts' ability to grant the relief sought herein. *See*, e.g., *In re Circuit City Stores*, *Inc.*, 416 B.R. 531, 536 (Bankr. E.D. Va. 2009) (section 1227 of BAPCPA (entitled "reclamation"), which is the provision through which section 546(c) was amended, "appears to have been adopted as an attempt by Congress to enhance certain types of reclamation claims raised by creditors in bankruptcy cases"); *In re SRC Liquidation*, *LLC*, No. 15-10541, 2017 WL 2992718, at *3 (D. Del. July 13, 2017) (citing *In re Circuit City Stores*, *Inc.*, 432 B.R. 225, 229 (Bankr. E.D. Va. 2010)) (same).
- 34. The deletion of the express requirement that a court grant replacement remedies under former section 546(c) cannot be read to strip the court of its authority and discretion to award an appropriate remedy under, *inter alia*, Bankruptcy Code section 105 to a reclaiming vendor when the court allows the debtor to retain its goods despite a vendor's demand that the debtor return them.³

In fact, if the deletion of former section 546(c)(2) (the only section referencing alternative remedies to physical reclamation) could be read to do this, then under the same logic, it must be

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- 35. Indeed, the leading bankruptcy treatise continues to recognize an administrative expense award is appropriate where a vendor's goods have been sold notwithstanding its assertion of reclamation rights. 5 Collier on Bankruptcy ¶546.04[2][b][vii] (16th ed.) ("A seller's administrative expense priority with regard to its reclamation claim is not extinguished by the sale of the goods subject to reclamation, even when the proceeds of the sale are used to satisfy a secured creditor's superior claim").
- 36. Further, reclamation is an equitable right. The Official Comment to UCC § 2-702, as adopted in North Dakota and California (the state the goods were delivered and received), states that the seller's right to reclaim from an insolvent buyer "takes as its base line the proposition that any receipt of goods on credit by an insolvent buyer amounts to a tacit business misrepresentation of solvency and therefore is fraudulent as against the particular seller." There must be a remedy for the victim of this deemed fraud, particularly in this case where the Debtor obtained goods in this deemed fraudulent manner and then sold the goods after receipt of a valid reclamation demand. Presumably, Congress would not intend to facilitate this type of behavior by relating reclaiming vendors to the status of general unsecured creditors and enriching the estate at the expense of the defrauded party. Or, as the Sixth Circuit held in rejecting the interpretation advanced by the Debtor, "It would be unjust to permit general creditors to benefit at the expense of one whose assets come into a bankrupt's possession under conditions which warrant rescission." *Phar-Mor, Inc. v. McKesson Corp.*, 534 F.3d 502 (6th Cir. 2008) (quoting *In re Federal's Inc.*, 553 F.2d 509,

read to do so much more—because former section 546(c)(2) was also the only section referencing the court's authority to <u>deny</u> a reclamation demand and allow the debtor to keep and use the goods, under the Debtor's interpretation courts have also lost the power to deny reclamation, making it an absolute right. (B.E. Capital acknowledges this is not a reasonable interpretation of the statute. Courts have repeatedly recognized the importance of allowing a debtor to keep and pay for goods subject to reclamation to facilitate reorganization. See, e.g., Pester Refining, 964 F.2d at 845; Griffin Retreading, 795 F.2d at 679.)

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518 (6th Cir. 1977)); accord Manley v. Ohio Shoe Co., 25 F.2d 384, 385 (4th Cir. 1928) ("Such [general] creditors have no right to profit by the fraud of the bankrupt to the wrong and injury of the party who has been deceived and defrauded").

37. Finally, reclamation under the UCC itself affords the reclaiming party a right to priority, by permitting the reclaiming creditor to recover goods received by an insolvent debtor, even though the insolvent debtor's other creditors do not have such right and may not be paid in full on account of goods they delivered. As section 546(c) was intended to preserve state law reclamation rights, the right to priority afforded thereby can only be preserved where the subject goods cannot be returned or traced by the debtor through the award of an administrative expense.

C. The Absence of a Determination With Respect to the TGC Claim Should Not Preclude a Determination of the Subject Reclamation Claim

38. That the alleged perfection of TGC's security interest has not yet been avoided as a preference, and that its claim has not yet been recharacterized, or otherwise compromised, should not preclude this Court from granting the relief sought herein. First, the Debtor and the Committee agree that even if the TGC claim—the sole outstanding secured claim—were allowed in full, there would be at least \$1 million available for distribution to unsecured creditors. ECF No. 355 pp.2-3 ("at a prior hearing, Debtor's counsel admitted the near certainty that creditors of the estate will receive fractional distributions, with a total difference between and repayment of over \$1 million"). Second, nothing would preclude this Court from allowing the Claim as an administrative expense, subject to satisfaction of the TGC claim, to the extent that it is determined to be secured, should it determine conditioning of allowance on likely events to be appropriate. Third, it would be unfair to deny this motion as premature, given the risk that B.E. Capital would be penalized for sitting on its reclamation rights. *Cf. Paramount Home Entm't v. Circuit City Stores, Inc.*, 445 B.R. 521, 529 (E.D. Va. 2010).

WHEREFORE, B.E. Capital requests that its Claim be afforded administrative priority and such other relief as this Court deems appropriate.

Dated: August 25, 2017 STORCH AMINI PC

/s/ Jeffrey Chubak

Jeffrey Chubak (admitted pro hac vice) 140 East 45th Street, 25th Floor

New York, New York 10017

Tel: (212) 490-4100 Fax: (212) 490-4208

E-mail: jchubak@storchamini.com

Attorneys for Creditor B.E. Capital

Management Fund LP

EXHIBIT 1

Proposed Order

UNITED STATES BANKRUPTCY COURT DISTRICT OF NORTH DAKOTA

In re:	
	Chapter 11
VANITY SHOP OF GRAND FORKS, INC.,	
	Case No. 17-30112
Debtor.	

ORDER ALLOWING CLAIM NO. 292 AS ADMINISTRATIVE EXPENSE

On the application of B.E. Capital Management Fund LP for an order allowing Proof of Claim No. 292 as an administrative expense; and due and proper notice having been provided; now therefore, IT IS ORDERED:

- 1. The motion is granted.
- 2. Proof of Claim No. 292 is hereby allowed as an administrative expense.

Dated:, 2017	
	United States Bankruptcy Judge

EXHIBIT 2

Proof of Claim No. 292, Filed by Anfield Apparel

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Fill in this information to identify the case:				
Debtor	Vanity Shop of Grand Forks, Inc.			
United States Ba	ankruptcy Court for the: District of Nort	h Dakot		
Case number	17-30112	,		

Official Form 410

Proof of Claim 04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Clai	art 1: Identify the Claim					
Who is the current creditor?	Anfield Apparel Group, Inc. Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor					
Has this claim been acquired from someone else?	✓ No Yes. From whom?					
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? Anfield Apparel Group, Inc. c/o The Fox Law Corporation 17835 Ventura Blvd., Suite 306 Encino, CA 91316 Contact phone 8187743545 Contact email srfox@foxlaw.com	Where should payments to the creditor be sent? (if different) Anfield Apparel Group, Inc. 20851 Currier Rd. City of Industry, CA 91789 Contact phone Contact email				
4. Does this claim amend one already filed? 5. Do you know if anyone else has filed a proof of claim for this claim?	Uniform claim identifier for electronic payments in chapter 13 (if you No Yes. Claim number on court claims registry (if know No Yes. Who made the earlier filing?	<u>`</u>				

Official Form 410 Proof of Claim

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Give Information About the Claim as of the Date the Case Was Filed

Pa	Give Information Ab	out the Claim as of the Date the Case was Filed
6.	Do you have any number you use to identify the debtor?	No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor:
	debtor:	res. East 4 digits of the debtor's account of any humber you use to identify the debtor.
7.	How much is the claim?	\$ 249841.09 Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8.	What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. goods sold
9.	Is all or part of the claim secured?	No
10.	Is this claim based on a lease?	 ✓ No ✓ Yes. Amount necessary to cure any default as of the date of the petition.
11.	Is this claim subject to a right of setoff?	No Yes. Identify the property:

Official Form 410 Proof of Claim

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		Ducument Page 21 0177			
12. Is all or part of the claim entitled to priority under	☑ N	0			
11 U.S.C. § 507(a)?	□ Y	es. Check all that apply:	Amount entitled to priority		
A claim may be partly priority and partly nonpriority. For example,		Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$		
in some categories, the law limits the amount entitled to priority.		Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$		
childed to phonty.		Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$		
		Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$		
		Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$		
		Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$		
	*	Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun	n on or after the date of adjustment.		
13. Is all or part of the claim	∠ N	0			
pursuant to 11 U.S.C. § 503(b)(9)?	da	es. Indicate the amount of your claim arising from the value of any goods rece ays before the date of commencement of the above case, in which the goods he ordinary course of such Debtor's business. Attach documentation supporting	have been sold to the Debtor in		
	\$ <u></u>				
Part 3: Sign Below					
The person completing	Check the	e appropriate box:			
this proof of claim must sign and date it.	☐ I am	the creditor.			
FRBP 9011(b).	☑ Iam	the creditor's attorney or authorized agent.			
If you file this claim electronically, FRBP	☐ I am	the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.			
5005(a)(2) authorizes courts to establish local rules specifying what a signature	I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.				
is. A person who files a	I understand that an authorized signature on this <i>Proof of Claim</i> serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.				
fraudulent claim could be fined up to \$500,000,	I have examined the information in this <i>Proof of Claim</i> and have reasonable belief that the information is true and correct.				
imprisoned for up to 5 years, or both.	I declare	under penalty of perjury that the foregoing is true and correct.			
18 U.S.C. §§ 152, 157, and 3571.	Executed	on date <u>06/28/2017</u> MM / DD / YYYY			
	<u>/s/Ang</u> Signa	reLa Yu			
		name of the person who is completing and signing this claim:			
	Name	Angela Yu			
		First name Middle name Last r	name		
	Title	Authorized Agent			
	Company	Anfield Apparel Group, Inc. Identify the corporate servicer as the company if the authorized agent is a servicer	<u> </u>		
	Address	20851 Currier Rd., City of Industry, CA, 91789			
	Contact ph	one Email			

Official Form 410 Proof of Claim

Case 17-30112 Doc 302 Filed 08/25/17 Entered 08/25/17 00:50:14 Desc Main KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 634-7181 | International (424) 236-7226

Debtor:					
17-30112 - Vanity Shop of Grand Forks, Inc.					
District:					
District of North Dakota, Fargo Division					
Creditor:	Has Supporting Doc	umentation:			
Anfield Apparel Group, Inc. Yes, supporting documentation successfully uplo					
c/o The Fox Law Corporation	tatement:				
17835 Ventura Blvd., Suite 306	Hara Balata d Olaina				
Fraince CA 0424C	Has Related Claim:				
Encino, CA, 91316	No Related Claim Filed By:				
Phone:	Related Claim Filed By.				
8187743545	Filing Party:				
Phone 2:	Authorized ag	ent			
Fax:					
8187743545					
Email:					
srfox@foxlaw.com					
Disbursement/Notice Parties:					
Anfield Apparel Group, Inc.					
20851 Currier Rd.					
20031 Guillet Nu.					
City of Industry, CA, 91789					
Phone:					
Phone 2:					
Fax:	Fax:				
E-mail:	F-mail·				
DISBURSEMENT ADDRESS					
Other Names Used with Debtor:	Amends Claim:				
	No				
	Acquired Claim:				
	No				
Basis of Claim:	Last 4 Digits:	Uniform Claim Identifier:			
goods sold	No				
Total Amount of Claim:	Includes Interest or	Charges:			
249841.09	No	· ·			
Has Priority Claim:	Priority Under:				
No	•				
Has Secured Claim:	Nature of Secured A	mount:			
No	Value of Property:				
Amount of 503(b)(9):					
No	Alliudi iliteresi Nate.				
Based on Lease: Arrearage Amount:					
No Basis for Perfection:					
Subject to Right of Setoff: Amount Unsecured:					
No					
Submitted By:					
Angela Yu on 28-Jun-2017 1:20:22 p.m. Pacific Time					
Title:					
Authorized Agent					
Company:					
Antield Apparel Group, Inc.					

Case 17-30112 Doc 392 Filed 08/25/17 Entered 08/25/17 00:59:14 Desc Main Document Page 23 of 77

Optional Signature Addr	ress:
-------------------------	-------

al Signatur Angela Yu

20851 Currier Rd.

City of Industry, CA, 91789

Telephone Number:

Email:

Fill in this information to identify the case:				
Debtor 1	Vanity Shop Of Grand Forks, Inc.			
Debtor 2 (Spouse, if filing)				
United States Bankruptcy Court for the: District of North Dakota				
Case number	17-30112			

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

	Part 1: Identify the Claim						
1.	Who is the current creditor? Anfield Apparel Group, Inc. Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor						
2.	Has this claim been acquired from someone else?	☑ No ☐ Yes. From whom?					
3.	Where should notices and payments to the	Where should notic	ces to the creditor	be sent?	Where should paymen different)	its to the credit	or be sent? (if
	creditor be sent?	The Fox Law Co	orporation		Anfield Apparel Gr	oup, Inc.	
	Federal Rule of	Name			Name		
	Bankruptcy Procedure (FRBP) 2002(g)	17835 Ventura I	Blvd., Suite 306	3	20851 Currier Rd.		
	(, , , , , , , , , , , , , , , , , , ,	Number Street	•		Number Street		
		Encino	CA	91316	City of Industry	CA	91789
		City	State	ZIP Code	City	State	ZIP Code
		Contact phone (818)	774-3545	·	Contact phone		
		Contact email srfox	@foxlaw.com		Contact email	_	
		Uniform claim identifier	for electronic paymer	nts in chapter 13 (if you u	use one):		
						_	
4.	Does this claim amend one already filed?	☑ No ☐ Yes. Claim num	ber on court claims	s registry (if known) _	<u>.</u> .	Filed on	DD / YYYY
5.	Do you know if anyone else has filed a proof of claim for this claim?	☑ No ☐ Yes. Who made	the earlier filing?				

Official Form 410 Proof of Claim page 1

Case 17-30112 Doc 392 Filed 08/25/17 Entered 08/25/17 00:59:14 Desc Main Document Page 25 of 77

6.	Do you have any number you use to identify the debtor?	No Ses. Last 4 digits of the debtor's account or any number you use to identify the debtor:
7.	How much is the claim?	\$\$ 249,841.09 Does this amount include interest or other charges?
		☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8.	What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
		Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.
		goods sold
9.	Is all or part of the claim secured?	* See attachment. Claim may be secured. Yes. The claim is secured by a lien on property.
		Nature of property:
		 Real estate. If the claim is secured by the debtor's principal residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim. Motor vehicle Other. Describe:
		Basis for perfection: Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
		Value of property: \$
		Amount of the claim that is secured: \$
		Amount of the claim that is unsecured: \$(The sum of the secured and unsecured amounts should match the amount in line 7.)
		Amount necessary to cure any default as of the date of the petition: \$
		Annual Interest Rate (when case was filed)% Fixed Variable
10.	ls this claim based on a	☑ No
	lease?	Yes. Amount necessary to cure any default as of the date of the petition.
11.	ls this claim subject to a	☑ No
	right of setoff?	☐ Yes. Identify the property:

Official Form 410 Proof of Claim page 2

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		•	•	
12. Is all or part of the claim entitled to priority under	☑ No			da bakar ini Palbat Masa
11 U.S.C. § 507(a)?	Yes. Check	cone:		Amount entitled to priority
A claim may be partly priority and partly		ic support obligations (including alimony and chi C. § 507(a)(1)(A) or (a)(1)(B).	ld support) under	\$
nonpriority. For example, in some categories, the law limits the amount entitled to priority.		2,850* of deposits toward purchase, lease, or rei ii, family, or household use. 11 U.S.C. § 507(a)(ervices for \$
emilia to priority.	bankru	salaries, or commissions (up to \$12,850*) earns toy petition is filed or the debtor's business ends C. § 507(a)(4).		
•	Taxes o	r penalties owed to governmental units. 11 U.S.	C. § 507(a)(8).	\$
	☐ Contrib	utions to an employee benefit plan. 11 U.S.C, §	507(a)(5).	\$
	Other. 8	Specify subsection of 11 U.S.C. § 507(a)() tha	t applies.	\$
	* Amounts a	tre subject to adjustment on 4/01/19 and every 3 years	after that for cases be	gun on or after the date of adjustment.
Part 3: Sign Below				
The person completing	Check the appro	priate box:	· · · · · · · · · · · · · · · · · · ·	
this proof of claim must	☐ I am the cre			
sign and date it. FRBP 9011(b).		ditor; ditor's attorney or authorized agent.		
If you file this claim		•	nkruntov Rule 3004	-
electronically, FRBP	The Land and American country and accountry of the conductor Denkry Interview (Pulls 2005)			
5005(a)(2) authorizes courts	Lam a guar	aritor, surery, endorser, or baller codebior. Ballion	rupicy Rule 3003.	
to establish local rules specifying what a signature				
is.	I understand that	t an authorized signature on this <i>Proof of Claim</i> aim, the creditor gave the debtor credit for any p	serves as an acknov avments received to	viedgment that when calculating the ward the debt.
A person who files a	anionin or the cu	and, the deditor gave the debtor of eart for any p	aymone reserved to	Well of Mile of Str.
fraudulent claim could be fined up to \$500,000,	I have examined and correct.	the information in this Proof of Claim and have	a reasonable belief	that the information is true
imprisoned for up to 5 years, or both.	1 .11		a	
18 U.S.C. §§ 152, 157, and	•	enalty of perjury that the foregoing is true and c	опест.	
3571.	Executed on dat	e 06/21/2017		
		MM / DD / YYYY		
		auch Up		•
		Just Why		
	Signature			
	Print the name	of the person who is completing and signing	this claim:	
		Angela Yu	•	
	Name	First name Middle name		ast name
	Title	Authorized agent		
	Company	Anfield Apparel Group, Inc.		
	. •	Identify the corporate servicer as the company if the	authorized agent is a	servicer.
•	4.11.	20851 Currier Rd.		
	Address	Number Street		
•		City of Industry	CA	91789
		City	· · · · · · · · · · · · · · · · · · ·	ZIP Code
	A	**************************************		
	Contact phone		Email	

Vanity Shop Of Grand Forks, Inc. Case No. 17-30112

Attachment to claim of Anfield Apparel Group, Inc.:

* Anfield Apparel Group, Inc. Has asserted a claim for reclamation (Exhibit "A") and filed a complaint seeking reclamation and impressment of a construction trust (Exhibit "B").

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The Fox Law Corporation

Bankruptcy & Related Matters

17835 Ventura Boulevard Suite 306 Encino, CA 91316 818. 774. 3545 Ph / 818. 774. 3707 FAX emails@foxlaw.com

March 15, 2017

Jon R. Brakke Caren W. Stanley Vogel Law Firm 218 NP Avenue P.O. Box 1389 Fargo, ND 58107-1389

by email only to <u>ibrakke@vogellaw.com</u> by email only to <u>cstanley@vogellaw.com</u>

Re:

Vanity Shop of Grand Rapids, Inc., chapter 11 filing, 17-30112

Demand for Reclamation

Dear Sir and Madam:

This firm represents Anfield Apparel, Inc., a creditor in the chapter 11 case holding a claim for reclamation of goods.

Attached to this letter are three invoices and bills of lading for shipment of goods in or about early February by Anfield to the Debtor. The attached invoices, in the amounts of \$19,422, \$120,499 and \$109,919.60.

Anfield demands that the Debtor promptly segregate all of the delivered goods, account for them to Anfield and promptly return all of the goods referenced in the three attached invoices and bills of lading. 11 U.S.C. §546(c)(1) Anfield will separately file a notice with the Court.

Anfield reserves all of its legal rights. I would appreciate the chance to speak with you about this in the next few days.

Sincerely yours,

THE FOX LAW/CORPORATION

Steven R.

Anfield Apparel, Inc.

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NORTH DAKOTA

In re:)	NOTICE OF PERFECTION OF CLAIMS OF
Vanity Shop of Grand Forks, Inc.,)))	CREDITOR ANFIELD APPAREL GROUP, INC. UNDER 11 U.S.C. §546 AND DEMAND FOR SEGREGATION OF RECLAIMED GOODS
)	Bankruptcy No.: 17-30112
Debtor.)	Chapter 11

Comes Now Anfield Apparel Group, Inc., ("Anfield") an active California corporation, with its Notice of Perfection under 11 U.S.C. §546.

Anfield delivered goods (the "reclaimed goods") to the Debtor in or about early February, 2017. Anfield was not paid for the goods. As of the filing date of this case was owed monies as reflected in the attached invoices and bills of lading. The reclaimed goods are described in the attached invoices and bills of lading.

Anfield's claim to reclamation of the reclaimed goods is based on valid and perfected and non-avoidable liens.

Anfield sold the goods on credit to the Debtor in the ordinary course of business, in the course of transactions with the Debtor. The Debtor was insolvent when Anfield delivered the goods. Anfield, here and by letter dated March 14, 2017, and addressed to Debtor's counsel, has made timely written demands for the return of the reclaimed goods and has sufficiently described the reclaimed goods by reference to invoices and bills of lading which were attached to the March 14, 2017, letter and which are attached to this Notice. The Debtor had possession of the

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goods as of the bankruptcy petition date and as of the date of both demands and the goods were not then in the hands of a buyer in the ordinary course of a good faith purchaser.

Anfield does not consent to the placing of any liens on the reclaimed goods for any purpose including any post-petition financing.

Dated: March 16, 2017

Respectfully submitted,

/s/ Steven R. Fox

Steven R. Fox Fox Law Corporation 17835 Ventura Blvd., Suite 306 Encino, CA 91316 Telephone: (818) 774-3545 Facsimile: (818) 774-3707

Facsimile: (818) 7/4-3/0

Srfox@foxlaw.com

Attorney for Anfield Apparel Group,

Inc.

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Case 17-30112 Doc 142 Filed 03/20/17 Entered 03/20/17 11:31:32 Desc Main Document Page 3 of 9

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2017, I electronically filed the foregoing NOTICE OF PERFECTION OF CLAIMS OF CREDITOR ANFIELD APPAREL GROUP, INC. UNDER 11 U.S.C. §546 AND DEMAND FOR SEGREGATION OF RECLAIMED GOODS with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record.

/s/ Steven R. Fox

Steven R. Fox Fox Law Corporation 17835 Ventura Blvd., Suite 306 Encino, CA 91316 Telephone: (818) 774-3545

Facsimile: (818) 774-3707

Srfox@foxlaw.com

Attorney for Anfield Apparel Group,

Inc.

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Document Page 33 of 77

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Entered 03/20/17 11:31:32 Desc Main Page 4 of 9

REVISED

Date: 1	31/2017					BiL	LOF	LA	DII	NG			Page	1	
Name: Address City/Sta	SHIP FROM The Vendor Name: Anfield Apparel Group, Inc. Address: 20851 Currier Road, City/State/Zip: City of Industry, CA 91789 Tel: 909-595-6088 x 109								Bill of Lading Number: <u>170131</u> LOADING APPT: ARRIVAL TIME:						
Tel: 90 Fax: 90	9-598-26 9-598-26	91 191	3								ADE		SPACE		
SHE? TO Name: Vanity c/o West Coast Warehouse									RRIER N		AEF FREIGHT				
			e Street,,						Se	el numb	er(s):				
			CA 9022	0					SÇ	AC:					
Tel: 316	935-99 3	8x227	aitn: Carl	DS			FOB: [<u></u>	Pr	o numbi	ər:				
Name:	Ti	∄RD PA€ •	TY FREIG	HT CHAR	BES BI	LL TO:					B	AR CODE	SPACE	Ì	
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Juan Enriquez 01/31/17

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Entered 03/20/17 11:31:32 Desc Main Page 5 of 9

Anfield Apparel Group, Inc.

20851 Currier Road City of Industry, CA 91789 **Invoice**

Date	Invoice #
2/2/2017	2017-099

Bill To	Ship To
Vanity Shop of GRand Forks, Inc.	VANITY 201 W. MANVILLE ST COMPTON, CA 90220

			P.O. No.		Terms	F	Project	
						45 DAYS		
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Balance Due

\$19,422.00

Case 17-30112 Doc 392

Doc 142 Case 17-30112

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Anfield Apparel Group, Inc.

20851 Currier Road City of Industry, CA 91789 **Invoice**

Date	Invoice #
2/1/2017	2017-098

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Ship To	
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201 W. MANVILLE ST	
COMPTON, CA 90220	
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Anfield Apparel Group, Inc.

20851 Currier Road City of Industry, CA 91789

revised

Date	Invoice #
2/1/2017	2017-097

Invoice

Bill To	•
Vanity Shop of GRand Forks, Inc.	

Ship To	
VANITY 201 W. MANVILLE ST COMPTON, CA 90220	

Balance Due

\$120,499.49

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UNITED STATES BANKRUPTCY COURT DISTRICT OF NORTH DAKOTA

In re Vanity Shop of Grand Forks, Inc.,	Bankruptcy Case No.: 17-30112					
Debtor.	Chapter 11					
	Adversary No.:					
Anfield Apparel Group, Inc. a California Corporation,						
Plaintiff,						
vs.						
Vanity Shop of Grand Forks, Inc.,						
Defendant.						

COMPLAINT FOR RECLAMATION FOR IMPOSITION AND IMPRESSMENT OF A CONSTRUCTIVE TRUST

Plaintiff, for its Complaint, states as follows:

Preliminary Statement.

This Complaint seeks reclamation of goods delivered by Plaintiff to 1. Defendant in the 45 day period immediately prepetition. Plaintiff made timely written demands on Defendant for reclamation. Defendant did not return or account for any of Plaintiff's supplied goods.

- 2. At all times relevant, Defendant did not track vendor supplied goods as to their location and whether such goods had been sold.
- 3. Defendant does not know if particular goods were in Defendant's warehouse, in one of its stores or if it had sold any particular goods.
- 4. For these reasons, Defendant has frustrated claims for reclamation and the Court should impose alternative remedies a trust, an accounting to the extent possible and damages as an administrative claim.

II.

Jurisdiction and Venue.

- 5. This is a core proceeding as provided for under 28 U.S.C. §157(b)(2)(A), (B) and (O) over which this Court has jurisdiction pursuant to 28 U.S.C. §§157 and 1334 and provisions of the Local Rules of the United States Bankruptcy Court for the District of North Dakota.
- 6. Defendant's case, No. 17-30112, was filed on March 1, 2017. It is pending in the U. S. Bankruptcy Court for the District of North Dakota.
- 7. Venue is proper in this district under 28 U.S.C. § 1409(a) as Defendant's bankruptcy case is pending in this district.

III.

Parties.

8. Plaintiff is a California corporation.

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Defendant is the Debtor-in-Possession with its principal office in Fargo,
 North Dakota.

IV.

Factual Background.

- 10. In the 45 day period before Defendant filed its petition, Plaintiff supplied to Defendant, and Defendant received, goods, as indicated in the documents which are attached here as Exhibit "A" and incorporated herein by reference as though set forth in full.
 - Invoice No. 2017-099, \$19,422
 - Invoice No. 2017-098, \$109,919.60.
 - Invoice No. 2017-097, \$120,499.49
- 11. The goods Defendant received from Plaintiff in three shipments were clothing meant for sale by Defendant to the public. (Unless indicated otherwise, all references to "goods" shall mean the three shipments referred to above in paragraph 9.)
- 12. Plaintiff has been in the business of selling clothing to retailers such as

 Defendant for seven years. Plaintiff has sold clothing goods to Defendant
 multiple times over a period of seven years.
- 13. Defendant did not pay Plaintiff for the three shipments of goods Plaintiff supplied to Defendant.

- 14. Defendant filed its voluntary petition under title 11 on March 1, 2017.
- 15. At the time Defendant filed its voluntary petition, Plaintiff is informed and thereupon alleges that Defendant was in possession of the goods Plaintiff supplied to Defendant.
- 16. Plaintiff sent a written demand for reclamation ("First Notice") on March 15, 2017, to Defendant. A copy of the First Notice is attached here, marked Exhibit "B," and incorporated herein by reference as though set forth in full herein.
- 17. Defendant did not return any goods to Plaintiff.
- 18. Defendant did not responded to Plaintiff's First Notice.
- 19. Plaintiff also filed its "Notice of Perfection of Claims of Creditor Anfield Apparel Group, Inc., Under 11 U.S.C. §546(c) and Demand for Segregation of Reclaimed Goods" ("Second Notice")with the Bankruptcy Court via the Court's electronic filing system on March 20, 2017. (Docket no. 142)
- 20. Defendant received service of the Second Notice through the Court's electronic noticing system. A copy of the Second Notice is attached hereto, marked Exhibit "C" and incorporated herein by reference as though set forth in full herein.
- 21. Again, Defendant did not return any goods.

- 22. Also, Defendant did not respond to the Second Notice.
- 23. Plaintiff is informed and believes and thereupon alleges that at the time Plaintiff sent the two notices and Defendant received the two notices,

 Defendant had possession and control of the goods Plaintiff supplied.
- 24. At a hearing held in the Bankruptcy Court on March 23, 2017, Defendant stated it did not track goods supplied to it by vendors and Defendant would be unable to ascertain where any of the goods Plaintiff supplied to Defendant were in its warehouse in any of Defendant's many stores or if the goods had been sold as of any date, e.g., the petition date, the dates of the First Notice and Second Notice.
- 25. Post-petition, a prepetition security interest asserted by Plaintiff's lender, Wells Fargo, Bank, N.A., was paid in full.
- 26. Prepetition, on February 1, 2017, TGC, LP, a Montana limited partnership, an insider of the Debtor, recorded a lien against Defendant's personal property assets including inventory.
- 27. The lien was recorded allegedly to secure claims which the insider alleges it holds against the Debtor for monies and which allegedly accrued over a period of years.
- 28. Given the date when TGC filed this lien, the lien is ineffective as to any reclaiming creditor as TGC did not file its lien in good faith. The lien is

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- subject to avoidance under the trustee's avoidance powers.
- 29. Defendant cannot identify and return any of the goods Plaintiff supplied to Plaintiff.
- 30. Defendant has either sold the goods Plaintiff supplied or has otherwise disposed of these goods, both violating Plaintiff's legal rights.
- 31. Defendant did not file a motion to address Plaintiff's two written demands for reclamation.

Count 1

For Reclamation.

- 32. Plaintiff incorporates paragraphs 1 through 30 as though set forth in full herein.
- 33. Plaintiff seeks reclamation pursuant to title 11 §546(c) and pursuant to statutory and common law.
- 34. In three shipments in the 45 days prepetition, Plaintiff sold goods to Defendant in the ordinary course of Plaintiff's business.
- 35. When these sales occurred, Defendant was insolvent. That the Debtor was insolvent is evidenced by the Debtor's admissions in its declarations and financial information filed in this case.
- 36. Plaintiff made two written reclamation demands on Defendant with both demands made in the statutory time limits provided for by title 11 §546(c).

- 37. Defendant did not process Plaintiff's goods into other products.
- 38. At the petition date and at the dates the First Notice and the Second Notice were sent, Defendant had possession and control of Plaintiff's goods.
- 39. Defendant cannot ascertain what quantity of Plaintiff's supplied goods were in its warehouse, in its stores or if it had sold any portion of these goods once the goods Plaintiff supplied were received by Defendant, at the time the bankruptcy case began or when Plaintiff sent its two notices.
- 40. Defendant does not maintain records tracking goods nor does Defendant code its inventory for tracking.
- 41. The Defendant's lender's lien was satisfied post-petition.
- 42. As to TGC's lien, it was filed shortly before the bankruptcy case began, it allegedly secures obligations incurred over a period of years allegedly in favor of TGC. TGC did not file its lien in good faith.
- 43. TGC's lien is subject to avoidance.
- 44. Plaintiff requests that the Court order Defendant to account for and return all of Plaintiff's goods supplied in the three prepetition shipments to Plaintiff.

Count 2

For Imposition and Impressment of a Constructive Trust

45. Plaintiff incorporates paragraphs 1 through 30 and 33 to 42 as though set forth in full herein.

- 46. By not tracking the goods which Plaintiff supplied, Defendant has (1) frustrated the purposes of the common law and statutory reclamation and has (2) rendered Plaintiff's reclamation remedies ineffective.
- 47. In the normal course, Defendant should ascertain from its records what portion of the goods Plaintiff supplied prepetition remained in Defendant's possession or control and Defendant would then return those goods identified as being in Defendant's possession or control.
- 48. Defendant cannot ascertain what goods Plaintiff supplied remained in Defendant's possession or control at any time after the goods where received by Defendant in February, 2017.
- 49. Due to Defendant's failure to track Plaintiff's goods, Defendant has gained an advantage, whether by fraud, by accident, by mistake, by undue influence, by violation of a trust, or by another wrongful act over Plaintiff.
- 50. As a result, Defendant is an implied trustee for Plaintiff of the benefit which Defendant gained as a result of the advantage it improperly obtained.
- 51. Had Defendant not gained this advantage, Defendant (1) would have accounted for Plaintiff's goods in its possession or control and (2) would have returned these goods.
- 52. In equity, the Court should impress a constructive trust on Defendant's

- monies as Defendant unfairly holds Plaintiff's property, monies and the Court should require Defendant to convey those monies to Plaintiff.
- 53. In the alternative, if the Court determines that impressing a trust on proceeds is not an appropriate remedy, then the Court should fashion an alternative equitable remedy using the Court's powers under title 11 §105.
- 54. The Court should act so to prevent Defendant from being unjustly enriched by its wrongful interference with Plaintiff's right of reclamation.
- 55. As Defendant cannot account for Plaintiff's goods or to determine if any of these goods were sold, Defendant should have to pay to Plaintiff the total sum of the three shipments, or \$249,841.09. This result is fair as it is Defendant who did not track the goods and who has frustrated Plaintiff's reclamation rights.

Attorneys' Fees, Conclusion and Prayer

- 56. The parties' agreement includes a provision for reasonable attorneys' fees for the prevailing party. Plaintiff has incurred fees in its efforts to assert reclamation and will continue to accrue fees and costs. Plaintiff requests an award of reasonable attorneys' fees and costs according to proof.

 WHEREFORE: Plaintiff prays for judgment as follows:
 - 1. On Count 1, a judgment in Plaintiff's favor for reclamation of goods, for an accounting and an order Defendant return to Plaintiff all of

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Plaintiff's goods supplied in the three shipments referenced supra.

- 2. For a judgment in Plaintiff's favor on Count 2 imposing a trust on the value of the goods Plaintiff supplied to Defendant in the 45 day prepetition period, \$249,841.09, plus interest as may be allowed from the dates Defendant failed to timely pay Plaintiff for the three shipments, or such other equitable remedy as the Court may determine appropriate and consistent with this Complaint.
- 3. For reasonable attorneys' fees and costs as the Court may allow.
- For such further alternative relief which is consistent with this Complaint and with this prayer.

Dated: April 18, 2017

Respectfully submitted,

/s/ Steven R. Fox

Steven R. Fox Fox Law Corporation 17835 Ventura Blvd., Suite 306 Encino, CA 91316

Telephone: (818) 774-3545 Facsimile: (818) 774-3707

<u>Srfox@foxlaw.com</u>

Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2017, I electronically filed the foregoing Complaint for Reclamation for Imposition and Impressment of a Constructive Trust with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record.

/s/ Steven R. Fox

Steven R. Fox Fox Law Corporation 17835 Ventura Blvd., Suite 306 Encino, CA 91316 Telephone: (818) 774-3545

Facsimile: (818) 774-3707

Srfox@foxlaw.com

Attorneys for Plaintiff

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Anfield Apparel Group, Inc.

20851 Currier Road City of Industry, CA 91789 Invoice

Date	Invoice#
2/2/2017	2017-099

Bill To	
Vanity Shop of GRand Forks, Inc.	V. 20 C

Ship To		
VANITY		
201 W. MANVILLE ST COMPTON, CA 90220		

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RECEIVER'S SIGNATURE / DATE This is to certify that we have well receive goods described above with good conditi	d D E	<u>r Loaded</u> ly Shippe y Driver	□ Ву		Contagnation and administration of conference and statement of conference				
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Anfield Apparel Group, Inc.

20851 Currier Road City of Industry, CA 91789 **Invoice**

Date	Invoice #
2/1/2017	2017-098

Вії То	Ship To
Vanity Shop of GRand Forks, Inc.	VANITY 201 W. MANVILLE ST COMPTON, CA 90220

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Document

Anfield Apparel Group, Inc.

20851 Currier Road City of Industry, CA 91789 revised.

Invoice

Date	Invoice#
2/1/2017	2017-097

Bill To	Ship To
Vanity Shop of GRand Forks, Inc.	VANITY 201 W. MANVILLE ST COMPTON, CA 90220

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The Fox Law Corporation

Bankruptcy & Related Matters

17835 Ventura Boulevard Suite 306 Encino, CA 91316 818. 774. 3545 Ph / 818. 774. 3707 FAX emails@foxlaw.com

March 15, 2017

Jon R. Brakke Caren W. Stanley Vogel Law Firm 218 NP Avenue P.O. Box 1389 Fargo, ND 58107-1389

by email only to ibrakke@vogellaw.com by email only to cstanley@vogellaw.com

Re:

Vanity Shop of Grand Rapids, Inc., chapter 11 filing, 17-30112

Demand for Reclamation

Dear Sir and Madam:

This firm represents Anfield Apparel, Inc., a creditor in the chapter 11 case holding a claim for reclamation of goods.

Attached to this letter are three invoices and bills of lading for shipment of goods in or about early February by Anfield to the Debtor. The attached invoices, in the amounts of \$19,422, \$120,499 and \$109,919.60.

Anfield demands that the Debtor promptly segregate all of the delivered goods, account for them to Anfield and promptly return all of the goods referenced in the three attached invoices and bills of lading. 11 U.S.C. §546(c)(1) Anfield will separately file a notice with the Court.

Anfield reserves all of its legal rights. I would appreciate the chance to speak with you about this in the next few days.

Sincerely yours,

THE FOX LAW/CORPORATION

Steven R

cc: Anfield Apparel, Inc.

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NORTH DAKOTA

In re:)	NOTICE OF PERFECTION OF CLAIMS OF CREDITOR ANFIELD APPAREL GROUP,
Vanity Shop of Grand Forks, Inc.,)	INC. UNDER 11 U.S.C. §546 AND DEMAND FOR SEGREGATION OF RECLAIMED GOODS
)	Bankruptcy No.: 17-30112
Debtor.)	Chapter 11

Comes Now Anfield Apparel Group, Inc., ("Anfield") an active California corporation, with its Notice of Perfection under 11 U.S.C. §546.

Anfield delivered goods (the "reclaimed goods") to the Debtor in or about early February, 2017. Anfield was not paid for the goods. As of the filing date of this case was owed monies as reflected in the attached invoices and bills of lading. The reclaimed goods are described in the attached invoices and bills of lading.

Anfield's claim to reclamation of the reclaimed goods is based on valid and perfected and non-avoidable liens.

Anfield sold the goods on credit to the Debtor in the ordinary course of business, in the course of transactions with the Debtor. The Debtor was insolvent when Anfield delivered the goods. Anfield, here and by letter dated March 14, 2017, and addressed to Debtor's counsel, has made timely written demands for the return of the reclaimed goods and has sufficiently described the reclaimed goods by reference to invoices and bills of lading which were attached to the March 14, 2017, letter and which are attached to this Notice. The Debtor had possession of the

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goods as of the bankruptcy petition date and as of the date of both demands and the goods were not then in the hands of a buyer in the ordinary course of a good faith purchaser.

Anfield does not consent to the placing of any liens on the reclaimed goods for any purpose including any post-petition financing.

Dated: March 16, 2017

Respectfully submitted,

/s/ Steven R. Fox

Steven R. Fox
Fox Law Corporation
17835 Ventura Blvd., Suite 306
Encino, CA 91316
Telephone: (818) 774-3545

Facsimile: (818) 774-3707 <u>Srfox@foxlaw.com</u>

Attorney for Anfield Apparel Group,

Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2017, I electronically filed the foregoing NOTICE OF PERFECTION OF CLAIMS OF CREDITOR ANFIELD APPAREL GROUP, INC. UNDER 11 U.S.C. §546 AND DEMAND FOR SEGREGATION OF RECLAIMED GOODS with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record.

/s/ Steven R. Fox

Steven R. Fox Fox Law Corporation 17835 Ventura Blvd., Suite 306 Encino, CA 91316 Telephone: (818) 774-3545

Facsimile: (818) 774-3707

Srfox@foxlaw.com

Attorney for Anfield Apparel Group,

Inc.

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Juan Enriquez 01/31/17

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Anfield Apparel Group, Inc.

20851 Currier Road City of Industry, CA 91789 Invoice

Date	Invoice #
2/2/2017	2017-099

Bill To	Ship To
Vanity Shop of GRand Forks, Inc.	VANITY 201 W. MANVILLE ST COMPTON, CA 90220

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Case 17-07011 Doc 1 Filed 04/18/17 Entered 04/18/17 17:02:55 Desc Main

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Case 17-30112 Doc 142 Filed 03/20/17 Entered 03/20/17 11:31:32 Desc Main

Document Page 7 of 9

Anfield Apparel Group, Inc.

20851 Currier Road City of Industry, CA 91789 Invoice

Date	Invoice #
2/1/2017	2017-098

Bill To				
Vanity Shop of G	Rand Fork	s, Inc.		
			, '	
•				

Ship To	
VANITY	
201 W. MANVILLE ST	
COMPTON, CA 90220	
•	

			ſ	P.O. No.		Terms		Project	
			ľ			45 DAYS		-	
Item	Description	S.O	Order	Prev. Inv	Backor	Invoiced	Rate	Amount	
VJING0056 vjing0043 VJING0048 MVP0778 MVP0778A VJING0055	11 SAS SP LT ROLL V25 10 HAR SP HR TINT RELEASE 12 GIRLFRIEND SP DEST ROLL 4 SAS SP DEST ROLL MED 4 SAS SP DEST ROLL 11 SAS SP FULL DEST RELEASE	241484 241476 241477 241486 241489 241478	8694 3000 820 320	0 3,371 0 0 0	5 0 0 0 0 47	1,499 323 3,000 320 320 3,103	13.00 13.20 13.25 9.50 9.50 13.00	4,263.60 39,750.00 3,040.00 3,040.00	
					Total Paym	nents/Cr	edits	\$109,919.60 \$0.00	
					Bala	ance D)ue	\$109,919.60	

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Case 17-07011 Doc 1 Filed 04/18/17 Entered 04/18/17 17:02:55 Desc Main

Case 17-30112 Doc 142 Filed 03/20/17 Entered 03/20/17 11:31:32 Desc Main

Document Page 8 of 9

REVISED

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Chy/State/	Zip: C	ompton	, CA 9022	0				_ 1_	CAG:						
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Anfield Apparel Group, Inc.

20851 Currier Road City of Industry, CA 91789

	Invoice						
Date	Invoice#						
2/1/2017	2017-097						

Bill To Vanity Shop of GRand Forks, Inc.

Ship To VANITY 201 W. MANVILLE ST COMPTON, CA 90220

			P.O. No.			Terms			Project		
			·	_				45 DAYS	3		
Item	Description	S.O Order			Prev. Inv	Backe	or	Invoiced R		ate	Amount
vjing0043 VJING0058 VJING0036	10 HAR 5P HR TINT RELEASE 10 HAR 5P FULL DEST DBL 11 SAS POTASSIUM V DBL BTN	241476 241480 241482	B139		0		323 2 0	3,371 3,137 2,754		13.20 12.85 12.96	44,497.20 40,310.45 35,691.84
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						•		-			
						То	tal				\$120,499.49
•	·					Pa	ym	ents/Cr	edits		\$0.00
						Ва	ala	nce C)ue		\$120,499.49

EXHIBIT 3

Proof of Claim No. 281, Filed by TGC

Fill in this information to identify the case:								
Debtor	Vanity Shop of Grand Forks, Inc.							
United States Case number	Bankruptcy Court for the: District of							

RECEIVED

KURTZMAN CARSON CONSULTANTS

Official Form 410

Proof of Claim

Part 1: Identify the Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

1.	Who is the current creditor?	TGC, LP Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor									
2.	Has this claim been acquired from someone else?	☑ No □ Yes. From whom?									
3.	Where should notices and payments to the creditor be sent?	GRAY - 2 - 4 - 4 - 4 - 5 - 5 - 5 - 5 - 5 - 5 - 5	es to the creditor	r be sent?	Where shou different)	ld payments to the	e creditor b	e sent? (if			
	Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Name PO Box 80743			Name						
		Number Street Billings	MT	59108	Number	Street					
		City	State	ZIP Code	City	Sta	te	ZIP Code			
		Contact phone (406)	552-8328		Contact phone	<u> </u>		_			
		Contact email jimb@	diamondbco.c	com	Contact email			_			
AND THE RESIDENCE AND THE PROPERTY OF THE PROP		Uniform claim identifier for electronic payments in chapter 13 (if you use one):									
4.	Does this claim amend one already filed?	☑ No ☐ Yes. Claim numb	per on court claim	s registry (if known)		Filed on	MM / DD	/ YYYY			
5.	Do you know if anyone else has filed a proof of claim for this claim?	☑ No ☐ Yes. Who made	the earlier filing?								

6.	Do you have any number you use to identify the debtor?	No Ses. Last 4 digits of the debtor's account or any number you use to identify the debtor:								
7.	How much is the claim?	\$\$ 5,248,777.43. Does this amount include interest or other charges? \[\sumset \text{No} \sumset \text{Yes.} \text{ Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).}								
8.	What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. Loan and interest								
9.	Is all or part of the claim secured?	No Yes. The claim is secured by a lien on property. Nature of property: Real estate. If the claim is secured by the debtor's principal residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim. Motor vehicle Other. Describe:								
	RECEIVEI JUN 2 6 20	Basis for perfection: Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)								
	KURTZMAN CARSON CON	Value of property: \$ Amount of the claim that is secured: \$ Amount of the claim that is unsecured: \$ (The sum of the secured and unsecured amounts should match the amount in line)								
		Amount necessary to cure any default as of the date of the petition:								
		Annual Interest Rate (when case was filed)% ☐ Fixed ☐ Variable								
10	Is this claim based on a lease?	o es. Amount necessary to cure any default as of the date of the petition. \$								
11	Is this claim subject to a right of setoff?	1 No 2 Yes. Identify the property:								

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12. Is all or part of the claim entitled to priority under	☑ No										
11 U.S.C. § 507(a)?	Yes. Check	one:					Amount entitled to priority				
A claim may be partly priority and partly	Domest 11 U.S.	ic support obligatio C. § 507(a)(1)(A) c	ons (including or (a)(1)(B).	g alimony and child	support) under		\$				
nonpriority. For example, in some categories, the law limits the amount entitled to priority.	Up to \$2 persona	\$									
chaded to phony.	☐ Wages, bankrup 11 U.S.	\$									
	☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).										
	☐ Contribu	utions to an emplo	yee benefit p	lan. 11 U.S.C. § 50	7(a)(5).		\$				
	Other. S	specify subsection	of 11 U.S.C.	§ 507(a)() that a	ipplies.		\$				
	* Amounts a	re subject to adjustm	nent on 4/01/19	and every 3 years af	ter that for cases t	oegun on or afte	er the date of adjustment.				
Part 3: Sign Below											
Oign Below											
The person completing this proof of claim must	Check the appro	priate box:									
sign and date it.	☑ I am the creditor.										
FRBP 9011(b).	☐ I am the creditor's attorney or authorized agent.										
If you file this claim electronically, FRBP				norized agent. Bank	. •)4.					
5005(a)(2) authorizes courts	I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.										
to establish local rules specifying what a signature											
is.	I understand that an authorized signature on this <i>Proof of Claim</i> serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.										
A person who files a	amount of the claim, the creditor gave the deptor credit for any payments received toward the dept.										
fraudulent claim could be fined up to \$500,000, imprisoned for up to 5	I have examined the information in this <i>Proof of Claim</i> and have a reasonable belief that the information is true and correct.										
years, or both. 18 U.S.C. §§ 152, 157, and	I declare under penalty of perjury that the foregoing is true and correct.										
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			/			JUN ?	2 6 2017				
	Cimarkum		~~~								
	Signature				KU	rtzman car:	SON CONSULTANTS				
	Print the name	of the person wh	o is complet	ting and signing t	nis claim:						
	Name	James R. Be	ennett								
		First name		Middle name		Last name					
	Title	President									
	Company	Identify the corpor	rate servicer as	the company if the a	uthorized agent is	a servicer.					
	A 1.1	3529 Gabel I	Road								
	Address		Street								
		Billings	-		MT	59102					
		City			State	ZIP Code					
	Contact phone	(406) 652-83	328		_{Emoil} iimh	@diamond	hoo com				
	Contact phone	1-00,002-00			Email Jirrio	warmond	200,00111				

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PO Box 80743 Billings, MT 59108

Statement Date: Amounts as of:

6/22/2017 2/28/2017

STATEMENT OF ACCOUNT

Vanity Shop of Grand Forks, Inc. PO Box 547

Fargo, ND 58107-0547

рате	DESCRIPTION	CHARGES	CREDITS ACCOUNT BALANCE
2/28/2017	Loan Principal Outstanding	\$5,000,000.00	\$5,000,000.00
2/28/2017	Interest Outstanding	\$248,777.43	\$5,248,777.43
			age 1

Borrowed Borrowed Borrowed Borrowed Borrowed Part Part Part Part Part Part Part Part	TGC, LP			Prin
Interest Rate Francis Francis Salance (P&I) Salance	Borrowed		7/11/2013	\$ 2,000,000.00
Interest Rate per Annum	Borrowed		9/26/2013	\$ 1,000,000.00
Interest Rate per Annum	Borrowed		2/11/2014	\$ 1,000,000.00
Interest Accr				\$ 4,000,000.00
7/11/2013	Interest Rate	per Annum	6.50%	
7/11/2013				
7/31/2013 7,479,45 2,007,479,45 8/31/2013 11,041.10 2,018,520,55 9/24/2013 8,5479,52 2,027,968,50 Advance on 9/25/13 of \$1M; interest on \$2M for 9/1/13-9/24/13 9/30/2013 3,205,48 3,030,273,98 interest on \$3M for 9/25/13-9/30/13 10/31/2013 16,561.64 3,046,835,562 11/30/2013 16,561.64 3,079,424.66 1/31/2014 16,561.64 3,095,986,30 2/10/2014 5,342,47 3,101,328,77 Advance on 2/11/14 of \$1M; interest on \$3M for 2/1/14-2/10/14 2/28/2014 12,821.92 4,114,150.69 interest on \$4M for 2/11/14-2/28/14 2/28/2014 22,082.19 4,179,684.93 4/30/2014 21,369,86 4,157,602,74 5/31/2014 22,082.19 4,245,219.17 9/30/2014 21,369,86 4,201,054,79 7/31/2014 22,082.19 4,245,219.17 9/30/2014 21,369,86 4,310,041,08 8/31/2014 22,082.19 4,288,671.22 11/30/2014 21,369,86 4,310,041,08 8/31/2015 22,082,19 4,332,123,27 1/31/2015 22,082,19 4,332,123,27 1/31/2015 22,082,19 4,334,150,67 3/2/2015 1,424.66 4,375,575,33 Interest on \$4M 3/1/15-3/2/15 3/3/2015 1,424.66 4,375,575,33 Interest on \$4M 3/1/15-3/2/15 3/3/2015 10,684,93 2,024,346,459 7/31/2015 11,041,10 2,033,479,66 6/30/2015 10,684,93 2,044,164.59 7/31/2015 11,041,10 2,055,205.69 8/31/2015 11,041,10 2,066,246.79 9/30/2015 10,684,93 2,076,931,72 10/31/2015 11,041,10 2,065,205.69 8/31/2015 11,041,10 2,066,246.79 9/30/2016 11,010,93 2,076,931,72 11/30/2016 11,010,93 2,011,010,93 2/29/2016 10,685,74 2,000,000 0 2/29/16 Balance 3/31/2016 11,010,93 2,011,010,93 4/30/2016 11,010,93 2,011,010,93 4/30/2016 11,010,93 2,011,010,93 4/30/2016 11,010,93 2,011,010,93 4/30/2016 11,010,93 2,012,076,976.0	_	Interest Accr		
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10/31/2013 3,205.48 3,030,273.98 interest on \$3M for 9/25/13-9/30/13 10/31/2013 16,561.64 3,046,835.62 12/31/2013 16,561.64 3,079,424.66 13/1/2014 5,342.47 3,101,328.77 Advance on 2/11/14 of \$1M; interest on \$3M for 2/1/14-2/10/14 2/38/2014 22,082.19 4,114,150.69 interest on \$4M for 2/11/14-2/28/14 4/30/2014 21,369.86 4,157,602.74 5/31/2014 22,082.19 4,179,684.93 6/30/2014 21,369.86 4,201,054.79 7/31/2014 22,082.19 4,223,136.98 8/31/2014 22,082.19 4,245,219.17 9/30/2014 21,369.86 4,266,589.03 10/31/2014 22,082.19 4,288,671.22 11/30/2014 21,369.86 4,266,589.03 10/31/2014 22,082.19 4,332,123.27 13/30/2015 1,424.66 4,375,575.33 3/3/2015 1,424.66 4,375,575.33 3/3/2015 1,424.66 4,375,575.33 1,424.66 2,001,424.86 3/31/2015 1,048.93 2,002,438.56 5/31/2015 10,684.93 2,002,438.56 5/31/2015 11,041.10 2,055,205.69 8/31/2015 11,041.10 2,055,205.69 8/31/2015 11,041.10 2,055,205.69 8/31/2015 11,041.10 2,056,26.79 9/30/2015 10,684.93 2,076,931.72 10/31/2015 11,041.10 2,087,972.82 11/30/2015 10,684.93 2,098,657.75 12/31/2015 11,041.10 2,087,972.82 11/30/2015 10,684.93 2,098,657.75 12/31/2015 11,041.10 2,087,972.82 11/30/2015 10,684.93 2,098,657.75 12/31/2015 11,041.10 2,087,972.82 11/30/2016 11,010.93 2,120,709.78 2/29/2016 11,010.93 2,120,709.78 2/29/2016 10,655.74 2,021,666.67 5/31/2016 11,010.93 2,011,010.93 4/30/2016 10,655.74 2,021,666.67 5/31/2016 11,010.93 2,032,677.60				
10/31/2013				
11/30/2013				interest on \$3M for 9/25/13-9/30/13
12/31/2013		·		
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6/30/2015 10,684.93 2,044,164.59 7/31/2015 11,041.10 2,055,205.69 8/31/2015 11,041.10 2,066,246.79 9/30/2015 10,684.93 2,076,931.72 10/31/2015 11,041.10 2,087,972.82 11/30/2015 10,684.93 2,098,657.75 12/31/2015 11,041.10 2,109,698.85 1/30/2016 11,010.93 2,120,709.78 2/29/2016 10,300.55 2,131,010.33 2/29/2016 (131,010.33) (131,010.33) Interest Payment - 2,000,000.00 2/29/16 Balance 3/31/2016 11,010.93 2,011,010.93 4/30/2016 10,655.74 2,021,666.67 5/31/2016 11,010.93 2,032,677.60	4/30/2015	10,684.93	2,022,438.56	
7/31/2015 11,041.10 2,055,205.69 8/31/2015 11,041.10 2,066,246.79 9/30/2015 10,684.93 2,076,931.72 10/31/2015 11,041.10 2,087,972.82 11/30/2015 10,684.93 2,098,657.75 12/31/2015 11,041.10 2,109,698.85 1/30/2016 11,010.93 2,120,709.78 2/29/2016 10,300.55 2,131,010.33 2/29/2016 (131,010.33) (131,010.33) Interest Payment - 2,000,000.00 2/29/16 Balance 3/31/2016 11,010.93 2,011,010.93 4/30/2016 10,655.74 2,021,666.67 5/31/2016 11,010.93 2,032,677.60	5/31/2015	11,041.10	2,033,479.66	
8/31/2015	6/30/2015	10,684.93	2,044,164.59	
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11/30/2015	9/30/2015	10,684.93	2,076,931.72	
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2/29/2016 (131,010.33) (131,010.33) Interest Payment - 2,000,000.00 2/29/16 Balance 3/31/2016 11,010.93 2,011,010.93 4/30/2016 10,655.74 2,021,666.67 5/31/2016 11,010.93 2,032,677.60	1/30/2016	11,010.93	2,120,709.78	
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3/31/2016 11,010.93 2,011,010.93 4/30/2016 10,655.74 2,021,666.67 5/31/2016 11,010.93 2,032,677.60	2/29/2016	(131,010.33)	(131,010.33)	Interest Payment
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5/31/2016 11,010.93 2,032,677.60	3/31/2016	11,010.93	2,011,010.93	
	4/30/2016	10,655.74	2,021,666.67	
6/23/2016 12,254.10 3,044,931.70 Advance on 6/1/16 of \$1M	5/31/2016	11,010.93		
	6/23/2016	12,254.10	3,044,931.70	Advance on 6/1/16 of \$1M

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6/3	0/2016	4,972.68	4,049,904.38	Advance on 6/24/16 of \$1M
7/3	1/2016	22,021.86	4,071,926.24	
8/3	1/2016	22,021.86	4,093,948.10	
9/3	0/2016	21,311.48	4,115,259.58	
10/	4/2016	2,841.53	4,118,101.11	
10/3	1/2016	23,975.41	5,142,076.52	Advance on 10/5/16 of \$1M
11/3	0/2016	26,639.34	5,168,715.86	
12/3	1/2016	27,527.32	5,196,243.18	
	1/2017	27,602.74	5,223,845.92	_
2/2	8 2017	24.931,51	3,248,777.43	
3/3	1/2017	27,602.74	5,276,380.17	
4/2	9/2017	25,821.92	5,302,202.09	

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, causing notice of such filing to be sent to all parties that have appeared in this chapter 11 case.

/s/ Jeffrey Chubak	
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